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No. 99-522

In The
Supreme Court of the United States

CITY OF MACEDONIA; ET AL.
Petitioners,

v.

CHRISTOPHER DEPIERO,
Respondent.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

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AMICUS CURIAE BRIEF OF ORANGE VILLAGE, OHIO IN SUPPORT OF THE PETITIONER, THE CITY OF MACEDONIA AND MOTION AND JOINT *AMICUS CURIAE* BRIEF OF THE OHIO MUNICIPAL LEAGUE

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MOTION BY THE OHIO MUNICIPAL LEAGUE FOR LEAVE TO FILE AN BRIEF AS AN *AMICUS CURIAE.*

Now comes the Ohio Municipal League, (hereinafter, sometimes, "the League") by and through counsel, and hereby moves this court for leave to participate as an *amicus curiae*, supporting the petition of the City of Macedonia, et al., for a writ of *certiorari*. The League is tendering a brief jointly with Orange Village, Ohio, which is permitted to file an *amicus curiae* brief, as a matter of right, pursuant to Section 4 of Rule 37 of the Rules of the Supreme Court of the United States. Barry M. Byron is special counsel to the Ohio Municipal League and is the chief legal officer (i.e. law director) of Orange Village, Ohio.

Pursuant to Section 2(a) of Rule 37 of the Rules of the Supreme Court of the United States, if a prospective *amicus* does not receive the consent of both parties, the *amicus* must petition the court for leave to file the brief, indicate which party has withheld consent and advise the court of the nature of the movant's interest.

The petitioner, the City of Macedonia, was willing to grant consent, but when the League sought the consent of the counsel for respondent in this case, i.e. Augustin F. O'Neil, consent was denied.

The League is a non-profit Ohio Corporation composed of a membership of 802 Ohio cities and villages, many of which have a mayor's court. The option of "Mayor's Court" is permitted under Ohio statutory law. Ohio Revised Code Chapter 1905.

The League, as a proposed *amicus*, believes that this court and the Sixth Circuit are defining due process for Ohio, and Ohio's municipalities which operate mayor's courts, in a fundamentally different manner than due process has been defined for Kentucky. In North v. Russell, 427 U.S. 328, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976), this court held that Kentucky's use of the right to a *de novo* appeal cured what was argued to be a due process violation. Not four years earlier, in Ward v. Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), this court held (without any citation to precedent) that a *de novo* trial could not be used to cure an alleged due process violation.

As a consequence of this disparate treatment, the Sixth Circuit Court of Appeals has put Ohio's municipalities and mayors at risk of being found to have committed constitutional violations if the municipality and its mayor hold court as permitted under Ohio law. The League, and its constituent members (including *amicus curiae* Orange Village, which has a Mayor's Court), have an interest in having this court determine whether or not the Sixth Circuit's

decision in this case accurately analyzes the constitutional issues presented herein.

As an additional point in support of this motion, the Ohio Municipal League is composed of entities which are permitted, pursuant to Section 4 of Rule 37 of the Rules of the Supreme Court of the United States, to file *amicus curiae* briefs as a matter of right. Consequently, the League respectfully requests leave to represent those municipalities before this court to, *inter alia*, advise this court of certain policy reasons for the Ohio's mayor's court system, which reasons may not be fully explicated by the parties to this case.

It is for these reasons that the Ohio Municipal League moves for leave to participate as an *amicus curiae* in the instant case.

STATEMENT OF *AMICUS* INTERESTS

Orange Village is a duly established, existing Ohio municipal corporation which exercises home rule authority pursuant to Article XVIII, Section 3 of the Ohio Constitution. (Appendix i) Pursuant to Article XVIII, Section 7 of the Ohio Constitution, Orange Village has enacted a charter and exercises its home-rule powers pursuant thereto.(Appendix i.)

Under Section 3 of Article IV of the Orange Village Charter, the Mayor of Orange Village "*** shall have all the

judicial powers granted to Mayors by the laws of Ohio." (Appendix iv)

Further, pursuant to Section 5 of Article IV of the Orange Village Charter, the Mayor of Orange Village also exercises significant executive authority, including but not limited to being the chief executive officer of the Village (Section 5(A) of Article IV of the Orange Village Charter), supervision of the administration of the Village's affairs (Section 5(A)(i) of Article IV of the Orange Village Charter), control of all of the departments of the Orange Village government (Section 5(A)(ii) of the Orange Village Charter), being the chief conservator of the peace and causing all of the laws and ordinances to be enforced within the Village (Section 5(A)(iii) of the Orange Village Charter). (Appendix iv-viii)

The Mayor of Orange Village also appoints the Chief of Police and all of the members of the Orange Village Police Department (Section 1 of Article V of the Orange Village Charter). (Appendix viii-ix)

As a consequence of the Sixth Circuit's ruling in the instant case, Orange Village and its mayor have been forced to alter the Village's method of conducting Mayor's Court – as otherwise permitted under Ohio law – or face exposure, pursuant to 42 U.S.C. Section 1983, for violating "clearly established" law. See, *Harlow v. Fitzgerald*, 457 U.S. 800,

818 (1982). Orange Village, therefore, has an interest in seeing the Sixth Circuit's decision reviewed by this court.

The prospective *amicus*, the Ohio Municipal League, is composed of over 800 cities in villages in the state of Ohio, many of which seek to operate a mayor's court, pursuant to existing statutory authority, which permits such courts to be operated by a municipality which does not have a municipal or county court within its municipal boundaries. If the mayors of many of these municipalities operate these courts, as permitted under state law, they face potential liability in light of the Sixth Circuit's decision in this case.

The *amicus* and prospective *amicus* urge this court to accept jurisdiction over this case and review the decision below; there should not be one definition of due process in Kentucky and a different definition of due process in Ohio.

SUMMARY OF THE ARGUMENTS

I. The *amici curiae* incorporate, by reference, the arguments of the petitioner, the City of Macedonia. The effect of the decision of the Sixth Circuit Court of Appeals in this case upon municipalities has been accurately described by petitioner in section I.A. of its brief. The activities of Ohio's mayor's courts have been severely curtailed. In order to avoid needless repetition, however, the arguments of petitioner will not be repeated in this brief.

II. The decisions of this court in North v. Russell, 427 U.S. 328, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976), and Ward v. Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), are fundamentally inconsistent. A *de novo* appeal in Kentucky was held to have erased the alleged due process violation; in Ohio it was not.

III. The Sixth Circuit Court of Appeals decision in this case has had the effect of fundamentally altering Ohio's judicial system. By ruling as it has, the Sixth Circuit Court of Appeals has eliminated the option of allowing the defendant to first be heard at the local level, and to hear the live testimony and view evidence supporting the charges before proceeding to the municipal court. Viewed in this way, the mayor's court proceeding, in addition to providing the option of resolution to the case at the local level, can be seen as giving the defendant a form of discovery. Thus, Ohio's mayor's court provides more process than would otherwise be available to a defendant in a criminal case pending in a court of general criminal jurisdiction (where discovery would be limited by Ohio's Rules of Criminal Procedure.)

VI. Ohio's court system, including the availability of mayor's courts, provides due process when the totality of the procedure is viewed.

ARGUMENT

THE CASE OF *NORTH V. RUSSELL* OVERRULED LANGUAGE IN *WARD V. MONROEVILLE* WHICH STATED A *DE NOVO* APPEAL OF RIGHT CAN NOT CURE A DUE PROCESS VIOLATION.

The essence of the amici's argument is that Ohio should be treated the same as Kentucky.

Both Ohio and Kentucky have provided a defendant the right to have a local offense adjudicated locally. In Ohio, a traffic offense, a misdemeanor offense or a violation of a local ordinance committed within the municipality, tried at the local level, subject to certain limitations. Ohio Revised Code Section 1905.01(A) (Appendix i) In Ohio, if the maximum penalty in the case includes jail time or fine in excess of one hundred dollars ($100), the defendant is entitled to a trial by jury. Ohio Revised Code Section 2945.17. (Appendix iv)

In Ohio, like Kentucky, the defendant is provided, as a matter of right, an appeal from the mayor's court. Ohio Revised Code Section 1905.22 (Appendix vii) This appeal is *de novo*. Ohio Revised Code, Section 1905.25 (Appendix iv) Further, Ohio law provides for an automatic and mandatory stay of mayor's court proceedings upon the filing

of the notice of appeal. Ohio Revised Code Sections 1905.23 (Appendix at iii) Under Ohio law, long standing precedent holds that the appeal *de novo* erases all of the legal and factual determinations of the lower court, from which the appeal is taken. Kilgore v. Emmitt (1878), 33 Ohio St. 410; Wanzner v. Self (1876), 30 Ohio St. 378.

In Ward v. Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), this court stated, without identifying any precedent:

> "Respondent also argues that any unfairness at the trial level can be corrected on appeal and trial de novo in the County Court of Common Pleas. We disagree. This 'procedural safeguard' does not guarantee a fair trial in the mayor's court; there is nothing to suggest that the incentive to convict would be diminished by the possibility of reversal on appeal. Nor, in any event, may the State's trial court procedure be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication. Petitioner is entitled to a neutral and detached judge in the first instance."

In North v. Russell, supra, however, this court quoted from Colten v. Kentucky, 407 U.S. 104, 92 S.Ct. 1953, 32 L.Ed.2d 584 (1972), language which is as applicable to

Ohio's mayor's court system as it was to Kentucky's police courts:

> "'The right to a new trial is absolute. A defendant need not allege error in the inferior court proceeding. If he seeks a new trial, the Kentucky statutory scheme contemplates that the slate be wiped clean. Ky.Rule Crim.Proc. 12.06. Prosecution and defense begin anew... The case is to be regarded exactly as if it had been brought there in the first instance.' Id., at 113, 92 S.Ct., at 1958."
>
> North Russell, supra, at 335, 96 S.Ct. at 2713.

There is no reason to treat Ohio's court system any differently than Kentucky's. If an alleged due process violation may be cured by a *de novo* appeal in Kentucky, the same should be so in Ohio, particularly in light of the policy considerations which support the having a local court handle minor cases, which will be discussed below. The Ohio court system, including the initial step of mayor's court, should be deemed by this court to comply with due process requirements of Article XIV of the U.S. Constitution.

OHIO'S COURT SYSTEM SHOULD BE PERMITTED TO RETAIN THE FLEXIBILITY TO HANDLE LOCAL VIOLATIONS LOCALLY, IN A MANNER PRESCRIBED BY THE OHIO LEGISLATURE.

The amici's second argument is one of public policy, which has been identified and approved in North v. Russell, 427 U.S. 328, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976): Ohio's municipalities should have the opportunity of providing persons, cited under a municipal ordinance, a hearing of the charges against them locally.

As a consequence of the Sixth Circuit Court of Appeals' decision below, those municipalities which still seek to provide a local trial of the charges by the mayor of the municipality now face a lawsuit for violating a defendant's civil rights. This result deprives the municipalities of the State of Ohio, and people charged with local violations of law, with the right to have a local resolution of the case.

In North v. Russell, 427 U.S. 328, 336, 96 S.Ct. 2709, 2713, 49 L.Ed.2d 534 (1976), this court noted the policies supporting the court's decision had been identified in Colten v. Kentucky, 407 U.S. 104, 92 S.Ct. 1953, 32 L.Ed.2d 584 (1972). This language describing the policy is as applicable

to Ohio's mayor's court system as it was to Kentucky's police courts:

> "We went on to note that the justifications urged by States for continuing such tribunals are the 'increasing burdens on state judiciaries' and the 'interest of both the defendant and the State to provide speedier and less costly adjudications' than those provided in courts 'where the full range of constitutional guarantees is available...' Id., At 114, 92 S.Ct., at 1959. Moreover, state policy takes into account that it is a convenience to those charged to be tried in or near their own community, rather than travel to a distant court where a law trained judge is provided, and to have the option, as here, of a trial after regular business hours. We took note of these practical considerations in Colten:
>
> 'We are not persuaded, however, that the Kentucky arrangement for dealing with the less serious offenses disadvantages defendants any more or less than trials conducted in a court of general jurisdiction in the first instance, as long as the latter are always available. Proceedings in the inferior courts

> are simple and speedy, and, if the results in Colten's case are any evidence, the penalty is not characteristically severe. Such proceedings offer a defendant the opportunity to learn about the prosecution's case and, if he chooses, he need not reveal his own. He may also plead guilty without a trial and promptly secure a De novo Trial in a court of general criminal jurisdiction.' Id., at 118-119, 92 S.Ct., at 1961."
>
> North v. Russell, supra at 336, 96 S.Ct. at 2713. (Emphasis added.)

In the instant case, the Ohio system provided the respondent with more process than he would have otherwise been entitled had he been cited directly into municipal court. As noted in North (citing Colten), the respondent was able to learn of the City's case against him, and he was not required to disclose his case in the Mayor's court. Ultimately, respondent prevailed in the municipal court and had the charges against him dismissed. Ohio's court system worked as it was supposed to, and respondent was provided with due process of law.

CONCLUSION

The Sixth Circuit's decision improperly subjects municipalities which utilize a mayor's court in Ohio, as

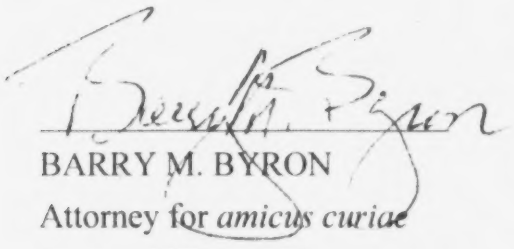
currently permitted under Ohio law, to a determination that a defendant has been deprived of due process rights. The prior determination of this court, that a *de novo* appeal does not cure the alleged procedural due process errors which are implicated when a mayor with executive authority acts as judge, is inconsistent with what has this court has permitted in North v. Russell, supra. North, supra, *sub silentio*, overruled the unsupported and unprecedented language in Ward v. Monroeville, supra, which stated that a subsequent appeal could not purge a proceeding which is alleged to have violated a defendant's due process rights.

As a matter of law, in Ohio, any defendant who goes before a mayor (who may or may not be the head of the municipal police department) is permitted to have the case heard, subsequently, by a neutral and detached judge or magistrate in the appropriate municipal or county court. There are many reasons why this system should be permitted, and several of these reasons have been identified by this court in cases which involved the State of Kentucky. North v. Russell, supra; Colten v. Kentucky, supra. This court should review the entire procedure which the entire Ohio court system provides, and determine that it provides due process to Ohio defendants who are hailed into a mayor's court.

Equally important, due process should mean the same thing in Ohio as it does in Kentucky; as of today, it does not

This court is urged to grant the petition for certiorari, reverse the Sixth Circuit's opinion below and allow Ohio's municipalities to operate their mayor's courts in the manner permitted by state law.

Respectfully submitted,



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APPENDIX

Selected provisions of the Ohio Constitution:

Ohio Constitution, Article XVIII, Section 3:

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Ohio Constitution, Article XVIII, Section 7:

> "Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."

Selected provisions of the Ohio Revised Code:

Ohio Revised Code Section 1905.01(A):

> "(A) In all municipal corporations not being the site of a municipal court nor a place where a judge of the Auglaize county, Crawford county, Jackson county, Miami county, Portage county, or Wayne county municipal court sits as required pursuant to section 1901.021 of the Revised Code or by designation of the judges pursuant to section

1901.021 of the Revised Code, the mayor of the municipal corporation has jurisdiction, except as provided in divisions (B), (C), and (E) of this section and subject to the limitation contained in section 1905.03 and the limitation contained in section 1905.031 of the Revised Code, to hear and determine any prosecution for the violation of an ordinance of the municipal corporation, to hear and determine any case involving a violation of a vehicle parking or standing ordinance of the municipal corporation unless the violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code, and to hear and determine all criminal causes involving any moving traffic violation occurring on a state highway located within the boundaries of the municipal corporation, subject to the limitations of sections 2937.08 and 2938.04 of the Revised Code."

Ohio Revised Code Section 1905.22, Appeals:

"Appeals from a mayor's court may be taken to the municipal court or county court having jurisdiction within the municipal corporation."

Ohio Revised Code Section 1905.23, Notice of Appeal:

> "Within ten days from the time a mayor renders judgment, the appellant shall file with the mayor's court a written notice of appeal designating the order or judgment appealed from and the court to which the appeal is taken.
>
> All further proceedings in mayor's court shall be stayed from the time of filing the notice of appeal with the mayor's court."

Ohio Revised Code Section 1905.24, Transcript:

> "Upon the filing of the notice of appeal, the clerk of the mayor's court shall make a certified transcript of the proceedings an deliver such transcript together with the original papers used on (sic) the trial, to the court to which the appeal is taken, within fifteen days from the rendition of the judgment appealed from.
>
> Upon receipt of the transcript and the papers mentioned in this section, the clerk of the court to which the appeal is taken shall file them and docket the appeal."

Ohio Revised Code Section 1905.25, Appeal; trial de novo:

> "An appeal from the mayor's court to the municipal court or county court shall proceed as a trial de novo."

Ohio Revised Code Section 2945.17, Right to Trial by Jury:

> "At any trial, in any court, for the violation of any statute of this state, or of any ordinance of any municipal corporation, except in cases in which the penalty involved does not exceed a fine of one hundred dollars, the accused has the right to be tried by a jury."

Selected provisions of the Orange Village Charter:

From Article IV:

"SECTION 3. JUDICIAL POWERS.

> The Mayor shall have all the judicial powers granted to Mayors by the laws of Ohio. If the Mayor elects to conduct a Mayor's Court, Council may authorize compensation for the Mayor, which shall be in addition to the compensation provided by Article III, Section 8 of the Charter."

"SECTION 5. EXECUTIVE POWERS.

> (A) The Mayor shall be the chief executive officer of the Municipality. Except as

otherwise provided in this Charter, the Mayor shall

(i) Supervise the administration of the municipality's affairs;

(ii) Except for committees of Council, appoint such committees and their chairpersons as are necessary, and exercise control over all such committees and all departments of the municipality.

(iii) Be the chief conservator of the peace within the Municipality and cause all laws and ordinances to be enforced therein;

(iv) See that all terms and conditions imposed in favor of the Municipality or inhabitants in any franchise or contract to which the Municipality is a party are faithfully kept and performed;

(v) Recommend to Council such measures as are deemed necessary or appropriate for the welfare of the Municipality and keep Council advised of the condition and future of the Municipality;

(vi) Act as the official and ceremonial